

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JARRETT M. JAMES,

Defendant.

ORDER

10-cv-615-bbc
07-cr-163-bbc

An evidentiary hearing was held in this case on March 25, 2011 on defendant Jarrett M. James's motion for post conviction relief under § 2255. Defendant contended that he had been denied the effective assistance of trial counsel because his counsel never told him that the government had proposed a plea bargain and refused to allow him to testify at trial.

After hearing the evidence, I found that defendant had failed to prove a denial of effective assistance. I found the testimony of defendant's trial counsel more credible than defendant's, starting with the alleged failure to tell defendant about the plea agreement. Disclosing a proposed plea agreement to a client is not something that trial counsel would forget to do, let alone choose not to do. Trial counsel testified that he had worked hard to

convince defendant that it would be to his advantage to take the government's offer but that defendant was convinced that he could prevail at trial and refused to discuss the matter at any length. Given the vagaries of human memory under stress, defendant may have simply forgotten that this discussion occurred or he may be telling the court what he thinks would be most helpful to him. Whichever it is, he is not believable.

Trial counsel also testified that he had discussed the matter of testifying with his client, warning him of the potential pitfalls if he did take the stand. He said that defendant had seemed pleased with the way that trial was going after the government's case, that he had talked with defendant again about testifying and that defendant agreed with counsel that it would be better not to take the stand. After defense counsel announced defendant's decision at trial, I questioned defendant about the decision to insure that it was his decision and he stood by it. He confirmed that it was his decision.

At the evidentiary hearing, defendant admitted having made the statements to the court but said that a little later, after the evidence was in and closing arguments were about to start, he came to regret his decision and wanted to change it, but said nothing to the court. I found this version of events implausible. From my observations of defendant, he is perfectly capable of speaking up if he is concerned about something. The "if" is important. Even now, defendant has no good explanation for his alleged change of mind about testifying.

In short, I conclude that defendant was not denied the effective assistance of counsel at his May 2008 trial for bank robbery.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Defendant has not made a substantial showing of a denial of a constitutional right so no certificate will issue.

Although the rule allows a court to ask the parties to submit arguments on whether a certificate should issue, it is not necessary to do so in this case because the question is not a close one.

ORDER

IT IS ORDERED that defendant Jarrett M. James's motion for post conviction relief under 28 U.S.C. § 2255, dkt. #1, is DENIED.

FURTHER, IT IS ORDERED that no certificate of appealability shall issue.

Entered this 29th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge